

SOURCE: PS-21, 29 FR 1446, Jan. 29, 1964, unless otherwise noted.

Subpart A—Applicability and Effects of Policy Statements

§ 399.1 Applicability.

All statements of general policy adopted by the Board for the guidance of the public will be published in this part, except as provided in § 399.2.

§ 399.2 Exclusions.

The following types of policies are generally not included in this part:

- (a) Policies relating solely to the internal management of the Board;
- (b) Policies requiring secrecy in the public interest or in the interest of national defense;
- (c) Policies that are repetitive of section 102 of the Act;
- (d) Policies that are fully expressed in a procedural or substantive rule of the Board, or in any opinion, decision, order, certificate, permit, exemption, or waiver of the Board;
- (e) Expressions of encouragement or admonition to industry to follow a certain course of action;
- (f) Positions on legislative items and on other matters that are outside the scope of the Board's current statutory powers and duties.

[PS-21, 29 FR 1446, Jan. 29, 1964, as amended by PS-63, 40 FR 6643, Feb. 13, 1975]

§ 399.3 Statements in other Board documents.

No statement contained in any Board opinion, decision, order, certificate, permit, exemption, or waiver shall be considered a statement of policy within the meaning of this part, even though such statements may constitute a precedent in future cases or declare future policy to be followed in like cases. Similarly, a denial by the Board or relief sought, or statements of the Board's reasons for failure to issue a rule upon which rulemaking proceedings have been commenced shall not be considered statements of policy, except to the extent that it is specifically stated that such denial or failure is based upon a policy thereafter to be followed.

§ 399.4 Nature and effect of policy statements.

Policy statements published in this part will be observed by the Board until rescinded, but any policy may be amended from time to time as experience or changing conditions may require. Changes in policy may be made with or without advance notice to the public and will become effective upon publication in the FEDERAL REGISTER unless otherwise provided. If it appears to the Board, in its consideration of any matter before it, that the application of a policy published in this part would run counter to an express provision of law or policy enunciated by Congress in the Act, the published policy shall not be applicable to such matter.

§ 399.5 Arrangement of policy statements.

The statements of general policy relating to the various duties and functions of the Board are grouped according to subject matter in the following subparts; the titles of the subparts indicate the general subject matter included therein.

Subpart B—Policies Relating to Operating Authority

§§ 399.10—399.11 [Reserved]

§ 399.12 Negotiation by air carriers for landing rights in foreign countries.

(a) It is the policy of the Board (jointly with the Department of State) that, as a general rule, landing rights abroad for United States flag air carriers will be acquired through negotiation by the U.S. Government with foreign governments rather than by direct negotiation between an air carrier and a foreign government.

(b) It is corollary to the foregoing policy that no United States air carrier may avail itself of representations by one foreign government to further its interest with another foreign government, especially with respect to landing rights, except insofar as such representations have been specifically authorized by the U.S. Government.

§§ 399.13—399.17 [Reserved]

§ 399.18 Maximum duration of fixed-term route authorization granted by exemption; renewal of such authority.

It is the policy of the Board to limit the duration of exemptions which authorize fixed-term route service to a maximum period of two years, and to entertain requests for renewal of such authority only when incorporated in a duly filed application for substantially equivalent certificate authority under section 401 of the Act. (See §302.909 of this chapter (Procedural Regulations) and §377.10(c) of this chapter (Special Regulations).)

§ 399.19 [Reserved]

§ 399.21 Charter exemptions (except military).

In deciding applications for exemptions from section 41102 of Title 49 of the United States Code by air carriers seeking to perform charter service in air transportation, we will give primary weight to the chartering public's own assessment of the air carrier services that best meet its transportation needs. Therefore, we will not, as a general rule, consider as relevant to our decision on such applications, objections based upon (1) offers by the objectors to perform the charter service, and/or (2) estimates of revenue or traffic diversion, unless in the latter case the objectors demonstrate that the diversion resulting from grant of the exemption would threaten their ability to fulfill their certificate obligations.

[PS-78, 43 FR 31886, July 24, 1978, as amended at 60 FR 43531, Aug. 22, 1995]

Subpart C—Policies Relating to Rates and Tariffs

§ 399.30 Definitions.

As used in this subpart:

DPFI formula fare means the trunk coach formula fare on July 1, 1977, as established by the Board in Phase 9 of the Domestic Passenger Fares Investigation (Docket 21866-9).

SIFL means the standard industry fare level, as set forth in § 399.31.

[PS-92, 45 FR 24118, Apr. 9, 1980]

§ 399.31 Standard industry fare level.

(a) *Generally.* Except as set forth in paragraph (d) of this section, the standard industry fare level ("SIFL") for coach/standard service in a market is equal to the predominant fare in effect in that market on July 1, 1977, as adjusted by the Board for cost increases.

(b) *Predominant fare.* For each market, the predominant fare in effect on July 1, 1977, is presumed to be as set forth below. The presumption may be rebutted, however, by showing that more passengers used a higher fare.

(1) For U.S. Mainland-Puerto Rico/Virgin Islands markets where the Board has specified day-of-week fare differentials: the peak-season midweek fare appearing in tariffs in effect on July 1, 1977.

(2) For U.S. Mainland-Puerto Rico/Virgin Islands markets where the Board has specified only seasonal fare differentials: the off-peak-season fare appearing in tariffs in effect on July 1, 1977.

(3) For U.S. Mainland-Hawaii markets: the peak-season second class fare appearing in tariffs in effect on July 1, 1977.

(4) For all other interstate and overseas markets: the lowest unrestricted fare in effect on July 1, 1977.

(c) *Adjustments for cost increases.* The Board adjusts the SIFL at least once every 6 months by the percentage change, since the previous adjustment, in the actual operating cost per available seat-mile for interstate and overseas transportation combined. The method of adjustment is illustrated in the example set out at the end of this subpart.

(d) *Intrastate markets in California, Florida, and Texas.* For each of these markets, the SIFL is equal to the level that it would be if the market were an interstate one whose predominant fare on July 1, 1977, was the DPFI formula fare.

(e) *Intra-Hawaii markets.* For intra-Hawaii markets, the Board's flexibility zones are based not on the SIFL, but on the standard Hawaiian fare level ("SHFL"), which is equal to 110 percent of the first class fare in effect on